

AMENDED IN SENATE JUNE 14, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1120

Introduced by Senator Berryhill

February 17, 2012

An act to ~~add Section 818.3 to the Government Code, relating to government liability~~ *amend Section 5821 of the Streets and Highways Code, relating to local government*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1120, as amended, Berryhill. ~~Government liability:~~ *Maintenance districts*: property-related service fees.

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a $\frac{2}{3}$ vote of the voters residing in the area affected by the fee or charge. ~~Under existing law, a public entity is immune from liability for an injury, whether the injury arises out of an act or omission of the public entity or a public employee, or any other person, except as provided by statute.~~

~~This bill would provide that a public entity shall not be liable for an injury related to a decrease or cessation of any water, sewer, or refuse collection service in connection with a fee or charge imposed or increased pursuant to specified provisions of the California Constitution, whether the injury arises out of an act or omission of the public entity, a public employee, or any other person, if the public entity fully~~

~~complies with those provisions of the California Constitution, and the affected property owners have refused to allow the imposition, extension, or increase of property-related fees and charges for the service.~~

Existing law authorizes a city or county to form a maintenance district, and to levy an assessment for the support of that district. Existing law authorizes a city or county that formed a maintenance district to increase a fee or charge imposed by the district if it complies with the procedures set out in the California Constitution, including, if applicable, voter approval of that increased fee or charge. Existing law defines for purposes of these provisions board of supervisors to include a city council.

This bill would provide that if an increase in a fee or charge imposed by a maintenance district is rejected by the voters, or if a fee or charge imposed by a maintenance district is reduced by the voters by initiative, then the board of supervisors that is acting as the board of directors for a maintenance district is prohibited from subsidizing a district to cure any deficiencies in funding of services provided by the district, if specified requirements are met. This bill would provide that this prohibition would not apply if the board of supervisors had agreed to provide these subsidies to the district at the time of the formation of the district.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5821 of the Streets and Highways Code
2 is amended to read:
3 5821. (a) The board of supervisors may, in its resolution
4 declaring its intention to order work done or improvements made
5 or by separate resolution, declare its intention to order that the
6 expenses of maintaining and operating any or all of ~~said those~~
7 improvements or any or all other improvements ~~such as that~~ are
8 permitted to be constructed ~~herein in that resolution~~, including the
9 cost of necessary repairs, replacements, fuel, power, electrical
10 current, care, supervision, and any and all other items necessary
11 for the proper maintenance and operation ~~thereof of those~~

1 *improvements*, shall be assessed, either partly or wholly, upon the
2 real property or upon the land only lying within the district to be
3 benefited by and to be assessed to pay the cost of the construction
4 of said improvement, or upon ~~such~~ *that* district as the board of
5 supervisors shall determine will be benefited by the maintenance
6 and operation of the improvements proposed to be maintained; the
7 amounts so assessed to be levied and collected in the same manner
8 and by the same officers as taxes for county purposes are levied
9 and collected.

10 *(b) (1) If an increase in a property-related fee or charge is*
11 *rejected by the voters pursuant to paragraph (c) of Section 6 of*
12 *Article XIII D of the California Constitution, or if an increase in*
13 *a fee or charge is reduced by the voters via an initiative pursuant*
14 *to Section 3 of Article XIII C of the California Constitution, the*
15 *board of supervisors that is acting as the board of directors for*
16 *the district shall not provide subsidies to the district to cure any*
17 *deficiencies in funding of the services provided in the district,*
18 *including for water, sewer, and refuse collection, if both of the*
19 *following apply:*

20 *(A) The public entity fully complies with subdivision (b) of*
21 *Section 6 of Article XIII D of the California Constitution.*

22 *(B) The affected property owners have refused to allow the*
23 *imposition, extension, or increase of property-related fees or*
24 *charges for the service.*

25 *(2) Paragraph (1) shall not apply if the board of supervisors*
26 *had undertaken the obligation to subsidize the district at the time*
27 *of the initial creation of the district as provided for in this chapter.*

28 *(3) For purposes of this subdivision, "full compliance with*
29 *subdivision (b) of Section 6 of Article XIII D of the California*
30 *Constitution" means all of the following:*

31 *(A) Revenues derived from the proposed fee or charge do not*
32 *exceed the funds required to provide the property-related service.*

33 *(B) Revenues derived from the fee or charge are not used for*
34 *any purpose other than that for which the fee or charge was*
35 *imposed.*

36 *(C) The amount of the fee or charge imposed on any parcel or*
37 *person as an incident of property ownership does not exceed the*
38 *proportional cost of the service attributable to the parcel or person.*

1 (D) *The fee or charge is not imposed for a service unless and*
2 *until that service is actually used by, or immediately available to,*
3 *the property owner in question.*

4 (E) *The fee or charge is not imposed for general government*
5 *services if the service is available to the public at large in*
6 *substantially the same manner it is to property owners.*

7 (F) *The public entity has identified all parcels upon which the*
8 *fee or charge is proposed and calculated the amount of the fee or*
9 *charge to be imposed upon each identified parcel.*

10 (G) *The public entity has provided a written notice by mail of*
11 *the proposed fee or charge to the record owner of each identified*
12 *parcel, in conformance with subdivision (c) of Section 6 of Article*
13 *XIII D of the California Constitution, and provided for all required*
14 *hearings.*

15 ~~SECTION 1. Section 818.3 is added to the Government Code,~~
16 ~~to read:~~

17 ~~818.3. (a) A public entity shall not be liable for an injury~~
18 ~~related to a decrease or cessation of any water, sewer, or refuse~~
19 ~~collection service in connection with a fee or charge imposed or~~
20 ~~increased pursuant to Section 6 of Article XIII D of the California~~
21 ~~Constitution, whether the injury arises out of an act or omission~~
22 ~~of the public entity, a public employee, or any other person, if both~~
23 ~~of the following apply:~~

24 ~~(1) The public entity fully complies with subdivision (b) of~~
25 ~~Section 6 of Article XIII D of the California Constitution.~~

26 ~~(2) The affected property owners have refused to allow the~~
27 ~~imposition, extension, or increase of property-related fees or~~
28 ~~charges for the service.~~

29 ~~(b) For purposes of this section, “full compliance with~~
30 ~~subdivision (b) of Section 6 of Article XIII D of the California~~
31 ~~Constitution” means all of the following apply:~~

32 ~~(1) Revenues derived from the proposed fee or charge do not~~
33 ~~exceed the funds required to provide the property-related service.~~

34 ~~(2) Revenues derived from the fee or charge are not used for~~
35 ~~any purpose other than that for which the fee or charge was~~
36 ~~imposed.~~

37 ~~(3) The amount of the fee or charge imposed on any parcel or~~
38 ~~person as an incident of property ownership does not exceed the~~
39 ~~proportional cost of the service attributable to the parcel or person.~~

1 ~~(4) The fee or charge is not imposed for a service unless and~~
2 ~~until that service is actually used by, or immediately available to,~~
3 ~~the property owner in question.~~

4 ~~(5) The fee or charge is not imposed for general government~~
5 ~~services where the service is available to the public at large in~~
6 ~~substantially the same manner it is to property owners.~~

7 ~~(6) The public entity has identified all parcels upon which the~~
8 ~~fee or charge is proposed and calculated the amount of the fee or~~
9 ~~charge to be imposed upon each identified parcel.~~

10 ~~(7) The public entity has provided a written notice by mail of~~
11 ~~the proposed fee or charge to the record owner of each identified~~
12 ~~parcel, in conformance with subdivision (e) of Section 6 of Article~~
13 ~~XIII D of the California Constitution, and provided for all required~~
14 ~~hearings.~~

15 SEC. 2. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or safety within
17 the meaning of Article IV of the Constitution and shall go into
18 immediate effect. The facts constituting the necessity are:

19 In order to ensure the continued supply of reliable drinking water
20 and to prevent the cessation of services relating to water, sewage,
21 and garbage, it is necessary that this act take effect immediately.